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Supreme Court, U.S.
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IN THE
Supreme Court of the United States

DONNA REID, as Personal Representative of the Estate
of JONATHAN MERLINO, deceased, and
HELEN KEARNS, as Personal Representative of the
Estate of ERIC SCOTT KEARNS, deceased,

Petitioners,

v.

NEW HAMPSHIRE INDEMNITY COMPANY,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

REPLY BRIEF

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I. FACTUAL ALLEGATIONS:

NHIC in its Opposition Brief cites to several factors that either are in dispute or otherwise are not dispositive.

For example, Jeffrey Bruce Anderson, Jr.'s parents, Jeffrey Bruce Anderson, Sr. and Christine Anderson (hereinafter "the Anderson's") lived at 87 Belvedere, Palm Coast, Florida. At the time of the accident Anderson Jr. lived at 25-B Braddock Lane, Palm Coast, Florida from April, 1999 until the January 5, 2000 accident. It is undisputed, however, that the Andersons owned both houses.

NHIC argues throughout its brief that Anderson Jr. did not have a "fixed dwelling unit" with his parents because they lived at two separate addresses. Parents and a child do not have to live at the same physical address in order to be considered part of the same household. (See Legal Authority, below, and Petition for Writ of Certiorari, pages 8, 9, and 10.)

NHIC contends that Anderson Jr. was independent and paying rent to his parents for living at 25B Braddock. There clearly is an issue of fact in this regard. Anderson Jr. testified that he paid his parents rent when he was employed. There is record evidence that Anderson Jr. had practically no employment or income between April 1999 and January, 2000. (See pages 5 and 6 of Petition for Writ of Certiorari for details.)

NHIC states that Anderson Jr. was consistently employed: based on record evidence, and that is not the

case. According to the Internal Revenue Service, Anderson Jr.'s reported income was: 1998 no income; 1999 \$3,407.05; 2000 no income; and 2001 no income.

Anderson Jr.'s relationship with his parents can hardly be characterized as a landlord-tenant relationship. There was no written lease. Although he had agreed to pay rent, the record at the very least creates an issue of fact as to whether he actually did. Again, Anderson Jr.'s testimony was that he paid his parents rent when he had employment and was earning money: the record shows that Anderson Jr. had extremely minimal employment or income while living at 25B Braddock.

If Anderson Jr. was so intent on being completely independent from his parents, why did he not rent from a stranger? Rather, he lived in his parents' house because it amounts to free room and related support.

Moreover, the Andersons never threatened eviction when Anderson Jr. did not pay rent: rather, they told Anderson Jr. that he should straighten up and do something with your life. This tolerance of non-payment are the actions of a parent, not a landlord.

Anderson, Jr. testified that he is a typical 21-22 year old. If he made \$200.00, he would usually spend it on the weekend, and then have to borrow it after he had spent it.

Anderson, Jr. had criminal problems that affected his ability to earn money to support himself and pay alleged rent to his parents. For example, the alleged

lawn maintenance job that he had in the Fall of 1999 was lost as a result of his arrest in Gainesville, Florida, for the attempt to distribute methamphetamine. NHIC references Anderson Jr.'s efforts to join the military in 1997 in order to show Anderson Jr.'s alleged independence. Anderson Jr. testified, however, that he was unable to join the military because he was arrested. Anderson Jr. was expelled from high school, although he did obtain his GED.

Clearly, Anderson family members were allowed privileges at 25B Braddock. The prior occupant at 25B Braddock was Lorraine Anderson, who was Anderson Sr.'s mother. Lorraine Anderson lived at 25B Braddock for about two year prior to Anderson Jr. Lorraine Anderson testified that sometimes she paid no rent, and other months she might pay \$50.00 or \$100.00. It was strictly voluntary.

Also to show Anderson Jr.'s independence, NHIC notes that Anderson Jr. received a \$10,000.00 workers' compensation settlement. Anderson Jr. testified that he actually received \$2,000.00 out of that settlement in December, 1999 (less than a month before the accident) and he did not repay his parents anything from it, whether it be for rent, loaned money, etc.

The record not only is in conflict as to whether Anderson Jr. paid any rent to his parents, but is undisputed that Christine Anderson gave her son cash in the Fall of 1999. Anderson Jr. said that his mother would give him \$10.00 to \$20.00 per week, which he used for necessities, like food, etc. NHIC argues that Anderson Jr. was responsible for his own grocery bills,

yet he had little to no income and was given money by his parents.

NHIC focuses on testimony that Anderson Jr. did not intend to live permanently at 87 Belvedere. What twenty-two-year-old intends to live in their parent's physical address for their entire life? There are numerous cases where the child did not have the intent to return permanently to live in their parent's primary residence, yet they were still part of their parent's household (*see Dwelle and Broxsie*, discussed below and in Petition for Writ of Certiorari).

Even though not a necessary element of proof, the record shows that Anderson Jr. was very involved with his parent's home at 87 Belvedere. For example, Anderson Sr. had suffered a stroke, and Anderson Jr. therefore had to help with maintenance work at 87 Belvedere. Donna Lunsford was at 87 Belvedere at least four times a week in the relevant time frame, and she recalled that Anderson Jr. was present ninety percent of the time. While there, he enjoyed the premises by swimming in the pool, eating, watching television, etc.

NHIC argues that Anderson Jr. would go weeks at a time without visiting his parent's house, but that statement is in conflict with the record.

All the parties agreed that Anderson Jr. could walk into the house at 87 Belvedere without knocking, and was free to avail himself of any food in the kitchen. Anderson Jr. kept old clothes at 87 Belvedere, and kept a basket of old toys there as well. Donna Lunsford one time saw Christine Anderson attempting to clean the

garage, and Christine Anderson was complaining that she could not do so because of boxes of Anderson Jr.'s belongings that were in the garage at 87 Belvedere.

There also was a question about whether Anderson Jr. had a key to his parent's house. Anderson Jr.'s sister, Nicole Rodriguez, testified that all the kids had keys to the house on Belvedere, and that she assumed Anderson Jr also did.

Anderson Jr., however, did not need a key. Anderson Sr. was always home as a result of his stroke, and therefore Anderson Jr. had free access to the house without having to use a key to gain entry.

NHIC contends that Anderson Jr. did not have permission to drive his parent's automobiles, yet Donna Lunsford saw him driving Christine Anderson's vehicle.

The record shows that Christine Anderson performed Anderson Jr.'s laundry while he lived at 25B Braddock. There also is record evidence that Anderson Jr. still had 87 Belvedere used as an address, which was listed as Anderson Jr. address on the ambulance report from the subject accident.

Christine Anderson paid \$10,000.00 for bond when Anderson Jr. was arrested for amphetamine in December, 1999. Anderson Jr. never repaid any of that money.

It is not disputed that after the subject accident of January 5, 2000, Anderson Jr. returned to his parent's house. Christine Anderson testified that her son stayed

there about six days after leaving the hospital, after which he returned to 25B Braddock (as soon as he was physically able). The record evidence, however, contradicts her statement. Roommate Juan Quiles testified that Anderson Jr. never returned to 25B Braddock after the motor vehicle accident, but rather stayed at his mother's house. Even though Anderson Jr. was able to return to 25B Braddock, he did not do so upon leaving the hospital or after. (Note that Quiles stayed at 25B Braddock until roughly May, 2000.)

Christine Anderson (Anderson Jr.'s mother) was a hostile witness. She testified that she was afraid that NHIC would sue her if the Court ruled that there was coverage for her son under the NHIC policy. Her testimony was contradicted numerous time in the record, such as her statement that Anderson Jr. was always employed and that he paid his rent for the use of 25B Braddock.

NHIC also addresses the relationship between Anderson Jr. and his parents prior to moving into 25B Braddock in April, 1999. (The 11th Circuit Court of Appeal's decision focuses on Anderson Jr.'s departure from 87 Belvedere to 25B Braddock in April 1999 as terminating the "household" relationship with his parents. As such, these facts were of less impact, and are addressed on page 4 of the Petition for Writ of Certiorari.)

Christine Anderson characterized 87 Belvedere as a "revolving door" for Anderson Jr.; that he moved around all the time, that he is a kid. He also was under house arrest at 87 Belvedere in 1996 and 1997.

II. LEGAL AUTHORITY:

NHIC argues that Anderson Jr. did not live at the same physical address as his parents. Florida law is very clear that children do not have to live in the same physical address as their parents to still be a member of their parents' household. (See pages 8, 9, and 10 of Petition for Writ of Certiorari.)

It is well recognized that children in college often are considered residents of their parents' households, even though they no longer physically live in their parent's house. (See, e.g., *General Guarantee Insurance v. Broxie*, 239 So.2d 595 (Fla. 1st DCA 1970) and *Seitlin v. Phoenix Insurance*, 650 So.2d 624 (Fla. 3rd DCA 1995).) By analogy, it is as if The Andersons owned the dormitory where Anderson, Jr. was living at the time of the accident. As Anderson himself said, he and his roommates were like college kids, just no college.

Both parties cite to *Row v. United Services Automobile Association*, 474 So.2d 348 (Fla. 1st DCA 1985) (briefed in the original Petition for Certiorari). NHIC argues that Mark Row had mental problems that affected his ability to work. Jeff Anderson, Jr. is not alleged to have a similar mental problem, but his criminal history certainly affected his ability to earn money, support himself, and pay rent to his parents while living at 25 Braddock. Anderson Jr.'s arrest for distributing methamphetamine in September, 1999 made it extremely difficult to find work. He was unable to join the Army because of another arrest. His tax returns also show that he had very little income.

Similar to Mark Row, there is record evidence that Anderson Jr. did not pay his parents rent, but rather lived for free in a house that they owned. There is also evidence that Anderson Jr. earned very little money, and in fact, was given his allowance for necessities directly from his parents. His tax returns show that Anderson Jr. earned \$3,407.05 in the four years from 1998 to 2001. This level of dependence and documented lack of earning certainly supports the finding that Anderson Jr. was a member of his parent's household.

The fact that 87 Belvedere was .9 miles away from 25 Braddock is immaterial. Just like in *Row*, Anderson Jr.'s parents owned 25 Braddock and supported their son while he lived there, including not paying rent.

Mark Row also left his father's apartment for about seven months a year and a half before the accident. Row went for two months to Louisiana looking for work, and Anderson Jr. went to Massachusetts for two months. Also, Mark Row had a female roommate who paid the utility bill for six months, so Mark Row's living expenses were not paid entirely by his father.

NHIC focuses heavily on the *Broxsie* opinion. The *Broxsie* opinion, however, supports a finding of coverage in the case at bar. In that case, Ms. Broxsie originally lived with her aunt, the named insured, in Monticello, Florida. Ms. Broxsie attended school in Thomasville, Georgia, and about a year before the subject accident, began living in a rented room in Thomasville. She testified that upon graduation it was her *intent to accept employment in Thomasville, and not return to live with her Aunt*. The trial court ruled that *as a matter of law*,

Ms. Broxsie was a resident of her Aunt's household for insurance purposes, even though she had not lived in the same physical address for over one year. The District Court affirmed.

NHIC has argued that the Anderson's did not intend for Anderson Jr. to be an insured under their policy. The intent does not control whether a person is a member of their parent's "household". "In entering judgment for State Farm, we conclude that the lower court too narrowly focused on Dwelle's statement, where he intended to reside in the future, and not upon the salient facts." *Dwelle v. State Farm*, 839 So. 2d 897 (Fla. 1st DCA 2003).

In *Dwelle*, Scott Dwelle was a college student who lived with his parents and at college. On the day of the accident, he had just married and was on his way to his honeymoon, after which his *intent* was to move in permanently with his wife in her apartment. The appellate court reversed the trial court's Summary Judgment for State Farm with directions to enter judgment in favor of Dwelle, noting that the trial court had overly emphasized Dwelle's future intent.

Concerning the intent, NHIC has cited a case arising out of a divorce lawsuit from 1941, *Kiplinger v. Kiplinger*, 2 So. 2d 870 (Fla. 1941). Although *Kiplinger* may be cited in Florida Appellate Opinions regarding "resident relative", the *Kiplinger* intent language is not deemed to be conclusive, or even particularly persuasive, in the opinions that actually deal with insurance policy interpretation. Divorce actions do not have the same rules of construction as an insurance

policy, to whit: insurance policy language is interpreted broadly, and any ambiguity is construed in favor of coverage. (See, e.g., *Blue Cross and Blue Shield of Florida v. Steck*, 778 So. 2d 374 (Fla. 2nd DCA 2001); *State Farm Fire and Casualty v. CTC Development Corp.*, 702 So. 2d 1072 (Fla. 1998).)

NHIC cites in Footnote 8, the case of *Whitten v. All State Insurance*, 476 So. 2d, 794 (Fla. 1st DCA 1995). That case involved the finding of no coverage for the insured's son when he was physically residing with his mother for three months prior to the accident. A review of the facts, however, show that Whitten had resided in Indiana with his wife for five years prior to living in his mother's house for three months before the accident. The court ruled that he was not a resident of his mother's household because he was collecting unemployment compensation from Indiana, he maintained his bank accounts in Indiana, his driver's license was in Indiana, and otherwise showed no intent of changing his clear Indiana residency. Moreover, the policy in *Whitten* defined "resident" or "reside in" as referring to "the physical presence in the named insured's household with the intent to continue to live there". *Whitten*, at 795. NHIC's policy is far less restrictive.

NHIC cites *Griffin v. General Guaranty Insurance*, 254 So. 2d 574 (Fla. 3rd DCA 1971). In that case, the court ruled that there is no coverage for an uncle under his nephew's policy, even though he had resided three or four days a week with the nephew, but also maintained his residence with his mother and step-father in another domicile. This finding was reached by

the trial judge as a *trier of fact*. It was not a summary judgment. The Appellate Court upheld the decision because the trial court's conclusion is presumed to be correct, and "will not be reversed unless there is a demonstration that there was a complete lack of sufficient, competent evidence to support the findings of the trial judge." *Id.* By contrast, the case at bar is a DeNovo review, and any conflicting testimony must be taken in the most favorable light to the non-moving party.

NHIC also cites to *Seitlin & Co. v. Phoenix Insurance Co.*, 657 So. 2d 624, (Fla 3rd DCA 1994). In that case, a law student was a "resident" of his parent's household, even though the student had his own apartment and had no intention of returning to his parent's house to live after he graduated. In that particular instance, the college student maintained a bedroom and possessions at his parent's house. *Seitlin* involves a finding that there was coverage without an intent of returning to the parent's household. Even though in that instance the student maintained a bedroom in his parent's house, that was merely evidence that weighed in favor of coverage. The 3rd DCA in *Seitlin* did not rule that it was an indispensable requirement, but rather considered it a relevant point in the balance.

NHIC also has cited it to *Kepple v. Aetna Casualty and Surety*, 634 So.2d 220 (Fla. 2d DCA 1994); *Alava v. All State Insurance*, 497 So.2d 1286 (Fla. 3rd DCA 1986); and *Southerland v. Glens Falls Insurance*, 493 So.2d 87 (Fla. 4th DCA 1986). These cases involved findings that there was coverage. They are only minimally persuasive in the case at bar because these opinions do

not indicate whether there is coverage under our facts. They merely assess the factual matters in those cases and find that there was coverage: they do not negate coverage in the case at bar.

III. SUPREME COURT JURISDICTION:

The Trial Court's Summary Judgment and Appellate Court's decision contravene Rule 56 and disregard controlling State Court decisions. The Courts disregarded facts in the record that weighed in favor of coverage. (See original Petition for Certiorari for in depth argument on this point.)

Respectfully submitted,

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